

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CHARLES H. DAVENPORT,)	Case No. 1:20 cv 0561
)	
Petitioner,)	JUDGE DAN AARON POLSTER
)	
v.)	MAGISTRATE JUDGE AMANDA M. KNAPP
)	
DOUGLAS FENDER,)	
)	<u>OPINION & ORDER</u>
Respondent.)	
)	

Before the Court is the Report and Recommendation of Magistrate Judge Amanda M. Knapp (“R&R”) ECF Doc. 13. The R&R recommends dismissal of Davenport’s petition for writ of habeas corpus because the statute of limitations has expired and both Count 1 and 2 are procedurally defaulted. The R&R also reports that Mr. Davenport has not shown cause sufficient to excuse procedural default or argued he is actually innocent. The R&R was filed on January 5, 2023. To date, no objections to the R&R have been filed.

[28 U.S.C. § 636\(b\)\(1\)](#) provides:

Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by the rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendation to which objection is made.

The failure to timely file written objections to a magistrate’s R&R constitutes a waiver of the right to obtain a *de novo* review of the R&R in the district court. *United States v. Walters*, [638 F.2d 947, 949–50](#) (6th Cir. 1981); *Thomas v. Arn*, [474 U.S. 140, 149–50](#) (1985). The failure to file

written objections also results in a waiver of the right to appeal. *Thomas v. Arn*, 728 F.2d 813 (6th Cir. 1984), *aff'd*, 474 U.S. 140 (1985).

Here, the time for objection has passed and no objections have been filed. The Court has reviewed Magistrate Judge Knapp's R&R and agrees that the statute of limitations has now expired and both Counts in Davenport's petition are procedurally defaulted. The Court also agrees that Davenport has failed to establish cause which might have excused the procedural default of his arguments, and he has not argued he is actually innocent. Accordingly, the Court ADOPTS the R&R (ECF Doc. 13) and DISMISSES Davenport's petition for habeas review.

IT IS SO ORDERED.

Dated: February 6, 2023

s/Dan Aaron Polster

United States District Judge